

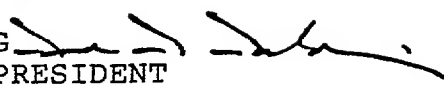
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THE WHITE HOUSE

WASHINGTON

November 1, 1983

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: FRED F. FIELDING   
COUNSEL TO THE PRESIDENT

SUBJECT: Political Activity

On October 17, the President authorized the formation of a campaign committee to work on behalf of his re-election. The purpose of this memorandum is to advise you of the legal and policy limitations on your individual political activity on behalf of Reagan-Bush '84.

First, only those employees in the Executive Office of the President who are paid from the appropriations for the White House Office may engage in political activity. You should check with your supervising officer to ascertain whether you are paid from White House Office appropriations; do not assume that because you have a White House pass you are paid from White House Office appropriations. If you are not paid from appropriations for the White House Office, you are subject to the provisions of the Hatch Act and may not engage in any partisan political activities. For a discussion of the permissible and impermissible activities of "hatched" employees, please turn to pages 8-11 of this memorandum. You will be expected to adhere strictly to the guidelines set forth on those pages.

Second, you should be aware that Federal law (18 U.S.C. § 603) prohibits any employee of the White House Office from contributing to the authorized campaign committee of the President, i.e., Reagan-Bush '84.

USE OF LEAVE

(1) White House staff members must perform their official duties for a minimum of 40 hours per week or 80 hours per two week pay period in order to receive their full Federal salary. If a staff member does not complete 40 hours of official duty in any week, the difference between the number of hours completed and 40 hours must be covered by annual leave, leave without pay, official holidays or made up in the second week of that pay period. The difference cannot be made up in a subsequent pay period.

(2) Those White House staff members who complete a

minimum of 40 hours of official duty during any full week (Monday-Sunday) may be absent from their official duty station for no more than one weekday (Monday-Friday) for the purpose of engaging in campaign activity without taking annual leave or leave without pay. If a staff member desires to be absent for campaign purposes for more than one weekday in any week, each additional weekday must be covered by annual leave or leave without pay, regardless of the number of official hours worked during that week. In other words, it is not permissible for a staff member to put in 40 hours of official duty in the first three days of the week and then take the remaining two weekdays off for campaigning without using annual leave or leave without pay.

(3) Sick leave cannot be used to cover an absence from official duty for the purpose of engaging in campaign activity.

(4) Any White House staff member not subject to the Hatch Act is permitted to take leave without pay to cover absence from official duties for the purpose of engaging in campaign activity.

(5) Some White House staff members are entitled to specific amounts of annual leave. Such leave may be used for campaign purposes; however, one cannot take an "advance" on annual leave to work on the campaign. Those White House staff not entitled to annual leave (e.g., commissioned officers) may use a ceiling of 15 days of paid leave (i.e., the equivalent of vacation time) for political campaign purposes.

(6) The following procedures will be followed when annual leave or leave without pay is used for campaign purposes:

(a) Staff members must submit, in advance of the leave period, a request for leave to their White House unit supervisor. Following approval by the supervisor, the request should be forwarded to the White House Administrative Office for approval and bookkeeping purposes.

(b) Supervisors must forward, in advance of a leave period, a report of their intended use of leave for political purposes to the White House Administrative Office.

#### USE OF VEHICLES AND MESSENGERS

White House vehicles may not be used for campaign purposes. This means that White House cars may not be used to transport staff members or materials to or from any campaign committee office or event. Nor may White House vehicles be used to transport staff members or campaign materials to airports or any other location if the purpose of the trip is primarily

campaign-related. Exceptions may be made to this rule only in those limited instances where time is of the essence and no other transportation is readily available. Because of the special requirements surrounding departures and arrivals from Andrews Air Force Base, White House vehicles may be used to transport White House staff members to that facility when they are accompanying the President, Vice President or First Lady on a campaign-related trip. Additionally, where the President is participating in a campaign event in the Washington, D.C. area or other location where White House cars are available for official purposes, White House cars may be used for the Presidential motorcade; however, the campaign committee must reimburse the Government for the fair market rental value of such transportation to the extent that it is not essential to the security and support of the President.

White House messengers should not be used to deliver or pick-up materials from the campaign committee.

#### USE OF COMMUNICATIONS SYSTEMS AND COPYING MACHINES

(1) In those limited circumstances in which government communication systems (telephone, telegraph, teletype, or radio) are used for campaign-related purposes, appropriate reimbursement or payment must be made by the campaign committee.

(2) Because of the need for liaison between limited numbers of White House staff members and the campaign committee, telephones may be used for local calls to the principal campaign office. However, White House telephones must not be used, even locally, for regular committee activities such as recruiting volunteers or fundraising.

(3) Government credit cards must not be used for campaign-related calls, whether made from within or without the White House.

(4) Government operators should not be used to place campaign-related long distance calls.

(5) Campaign-related long distance telephone calls made from the White House may be made only if charged to a credit card issued by the campaign committee or on telephones installed and maintained by the campaign committee for exclusive use in dealing with campaign committee matters.

(6) The incoming WATS System (800 #) should not be used to call into the White House on campaign matters.

(7) White House Communications Agency (WHCA) facilities provided outside the White House in connection with travel may

continue to be used during mixed and wholly campaign trips. These facilities must be used exclusively for communications relating to trip planning and arrangements and not for direct campaign purposes such as fundraising and crowd building. The government will be reimbursed for the use of these facilities.

(8) Except in limited instances approved by the White House Counsel's Office, Government copying machines may not be used to reproduce materials for transmittal to the campaign.

#### TRAVEL

Government funds are not to be used for the political travel of staff members. Specific guidelines relating to campaign travel by Senior Administration officials will be circulated by a separate memorandum.

Any political or "mixed" travel by White House staff must be approved in advance by Margaret Tutwiler and John Rogers. No reimbursements will be made for non-approved travel expenses.

#### MEETINGS IN GOVERNMENT BUILDINGS

(1) Government buildings, including White House offices and meeting rooms, should not be used for meetings or events organized by the campaign. Informal meetings involving small numbers of campaign officials and White House staff members may occasionally be held in a White House staff member's office or, if it is a luncheon or breakfast meeting, in the White House Mess, provided that such meetings do not interfere with the conduct of Government business.

(2) Campaign fundraising activities of any kind are prohibited in or from Government buildings.

(3) Campaign-sponsored activities (receptions, dinners, meetings, but not fundraisers) may be held in the Executive Residence at the White House, provided that either the President, Mrs. Reagan, or some other family member attends the event. Campaign events (other than fundraisers) may also be held at the Vice President's Residence so long as the Vice President, Mrs. Bush, or some other family member attends the event. The cost of campaign events at either residence must be paid by the campaign in accordance with the guidelines which have been established for the use of these residences for non-official purposes.

#### USE OF PHOTOGRAPHS

(1) White House photographers may continue to photograph

all Presidential, First Lady, and Vice Presidential activities for the purpose of creating an archival record of this Administration. However, as a general rule, photographs taken by White House photographers at campaign events may not be used for distribution to individuals attending such events or for any other campaign purpose.

(2) Photographs taken at events in the Executive Residence (other than campaign-sponsored events), at West Wing and East Wing meetings, and at non-campaign events outside the White House may be distributed as in the past.

(3) The campaign committee will be expected to provide a photographer at all campaign events for which it desires to distribute photographs to the participants. White House photographers will not photograph receiving lines or greetings at campaign events, except to the extent necessary for archival purposes.

(4) The campaign committee may purchase for its use photographs taken by White House photographers in those limited circumstances where those photographs provide the only source for a particular picture. All photograph purchase requests from the campaign committee must be directed to the Director of the White House Photo Office. A record of all campaign photo requests will be maintained by the Director of the White House Photo Office who will be responsible for billing the campaign committee for all photo orders on a monthly basis at the normal rate and according to the procedures established by the government for the purchase of pictures.

(5) Photographs of appropriate quality which are produced by campaign photographers may be forwarded to the White House for signature.

#### CORRESPONDENCE

(1) Campaign-related correspondence must not be produced at the White House, nor can White House stationery, stamps or related supplies be used in the preparation of such correspondence at another location. Campaign-related correspondence, prepared elsewhere, may be brought to the White House for signature.

(2) These guidelines will be followed in handling campaign-related correspondence received at the White House:

(a) Correspondence expressing general support for the President and his policies may continue to be answered as at present. Letters of response may include whatever substantive response is appropriate as well as thanking the writer for his

or her encouragement. Note well, however, that no references should be made to the 1984 elections or the political prospects of the Administration or the Republican Party.

(b) Correspondence which primarily relates to the 1984 campaign should not be answered by White House staff members or other government employees. All such correspondence should be forwarded to the campaign committee. However, if you receive resumes of individuals offering their services to the campaign, you may send an acknowledgement to the sender advising of the referral of his or her resume to the campaign committee.

(c) Correspondence that primarily deals with governmental issues and refers to the campaign may be answered in the White House as to the governmental issues raised but no reference should be made to campaign-related comments. The original of the correspondence can be forwarded to the campaign committee for response to the campaign-related matters.

(d) Federal law prohibits the receipt of contributions in federal buildings. Occasionally, contributions intended for the campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be handled as they have in the past, by returning the contributions to the sender with an explanation of the applicable Federal law and a statement of the appropriate recipient's address. (Appropriate language may be obtained from the White House Counsel's Office.) There should be no acknowledgement of receipt of a contribution from the White House to the contributor. If the contribution is accompanied by a letter that deals primarily with governmental issues, a response dealing with those issues may be prepared and sent from the White House; however, there must be no reference to the contribution.

(e) The White House or EOB address should not be suggested as a place where any communication relative to the campaign should be addressed. All such communications should be sent to Reagan-Bush '84, 440 First Street N.W., Washington, D.C. 20001.

(f) In responding to incoming mail and preparing outgoing correspondence, staff members should be guided by the following:

- No reference should be made to the writer's, the recipient's or any other individual's future support, role or interest in a political campaign;
- No reference should be made to any past, present or future political contributions;

- Outgoing correspondence should be prepared with a view toward possible interpretations by a third party reader: Your intentions are not the only criteria by which your words are judged.

### CRIMINAL STATUTES

A number of criminal statutes prohibit the use of Federal programs, property, or employment for political purposes. Violation of these criminal statutes are punishable by imprisonment and/or the payment of a substantial fine. Certain staff members may also be subject to investigation and possible prosecution by a Special Prosecutor in connection with alleged violations of these statutes.

Solicitation of Campaign Contributions: Solicitation of campaign contributions from or by Federal employees is prohibited, as is the solicitation or receipt of contributions in Federal buildings or on Federal property. Unless specifically approved by the White House Counsel's Office, no White House staff member shall sign a fundraising letter on behalf of any Federal candidate.

Use of Official Authority: Criminal statutes also prohibit a Federal employee from using his or her "official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate." There is, however, no definitive interpretation as to what types of activities constitute interference with or affecting the results of such an election. If you have any question as to whether any action you may take would be precluded by these laws, do not do it; seek guidance from the White House Counsel before taking any further action.

The following types of activities are prohibited by these laws:

- One Federal employee directly or indirectly soliciting another Federal employee for a campaign contribution.
- Solicitation or receipt of campaign contributions on federal property or in federal buildings. This means that fundraising events may not be held in the White House; that no fundraising phone calls or mail may emanate from the White House or any other Federal buildings; and that no campaign contributions may be received at the White House or any other federal building.
- Soliciting or accepting a campaign contribution or campaign support in exchange for a promise to appoint someone to a Federal job.



-- Promising or withholding Federal benefits (jobs, grants, contracts, etc.) based on political support or non-support.

-- Penalizing employees or withholding employment in order to induce someone to make a political contribution or otherwise participate in political activity.

The White House Counsel's Office is available to answer any question on the legality or propriety of activities falling within the statutes discussed above. You should call Sherrie Cooksey at 456-7803 if you have any questions concerning proposed campaign activities.

#### HATCH ACT

The Hatch Act, 5 U.S.C. §§ 7321-7327, covers all EOP employees except those:

- a) paid from the appropriations for the White House Office;
- b) appointed to their current positions by the President by and with the advice and consent of the Senate;
- c) serving as head or assistant head of an executive or military department.

All other government employees, including Schedule Cs and detailees, are covered by Hatch Act prohibitions. Thus, employees in the Office of the Vice President (other than those paid from Senate appropriations) and the Office of Policy Development, are, among others, "hatched" under the Act and must abide by its provisions.

The restrictions of the Hatch Act are applicable to covered employees 24 hours a day, regardless of whether such employees are on annual or sick leave or leave without pay -- as long as a covered individual is on the employment rolls of the Government, he or she is subject to the restrictions of the Hatch Act.

Employees covered by the Hatch Act may not:

- 1) take an active part in the management of a political campaign;
- 2) be a partisan candidate in an election for state or national office;

- 3) serve as an officer of a political party, a member of a national, state or local committee of a political party, or an officer or member of a committee of a partisan political club;
- 4) organize a political organization or club;
- 5) solicit, receive, handle, otherwise account for, or disburse political contributions;
- 6) sell tickets to, organize or actively participate in any political fundraising activity;
- 7) solicit votes for or against a candidate;
- 8) serve as a party or candidate challenger or pollwatcher;
- 9) drive voters to the polls for a candidate or party;
- 10) endorse or oppose a candidate in a political advertisement, broadcast or campaign literature;
- 11) serve as a delegate or alternate to a political convention;
- 12) organize or actively participate in the activities of a political convention;
- 13) serve on a standing committee of a political convention;
- 14) circulate a candidate nominating petition;
- 15) address a convention, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office.

Employees covered by the Hatch Act may:

- 1) register and vote;
- 2) make financial contributions to a party or candidate, except that 18 U.S.C. § 603 precludes employees of the White House Office from contributing to the authorized campaign committee of the President;
- 3) express their opinion on political subjects;
- 4) wear campaign buttons or display bumperstickers;

- 5) be a member (but not an officer or committee member) of a political party or organization, so long as they do not actively engage in campaign activities;
- 6) attend (but not as a delegate) a political convention, fundraising function or other political gathering, so long as they do not organize or participate in the program of such an activity;
- 7) sign a nominating petition.

The "hatched" support staff of an exempted Administration official may perform their normal clerical and ministerial functions in connection with the political travel and appearances or activities of their principal provided that the functions they perform are related to their official responsibilities. Such employees, however, may not perform tasks that are purely political in nature and which relate solely to their principal's political activities. Hence, a "hatched" employee may make the logistical arrangements for his or her principal's political travel or appearances and even accompany the principal on such travel 1/, but, such employee may not write a purely partisan speech for his or her principal or engage in any of the "management" activities of a political event or convention, e.g., plan or sell tickets to a political event or work on the activities of a committee, such as the Platform or Rules Committees, of a political convention.

Additionally, the Special Counsel of the Merit Systems Protection Board has taken the position that "hatched" employees, may write briefing materials on official Administration activities for use by Administration officials, even when such materials will be included in partisan political statements; however, such employees may not write or prepare any materials that will be used only for political purposes, e.g., materials for the platform of the Republican Party, nor may they prepare any materials containing statements of political advocacy.

Again, if you have any questions with respect to these matters, please call the White House Counsel's Office before you act.

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1/ The travel expenses of a "hatched" employee accompanying his or her principal on political business must be paid from appropriated funds.

THE WHITE HOUSE

WASHINGTON

January 31, 1984

MEMORANDUM FOR THE SENIOR STAFF

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Communications with  
"Independent Expenditure Committees"

Prior to the President's announcement of his candidacy for re-election, several political committees announced their intentions to make "independent expenditures" on behalf of the President if he became a candidate for re-election. Such statements were made by the National Conservative Political Action Committee (NCPAC) and The Fund for a Conservative Majority (FCM); additionally, we have been advised that a committee called Americans for Reagan has been formed as an independent expenditure committee.

An independent expenditure is defined as

. . . an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate. [2 U.S.C. § 431(17) (emphasis added).]

The Federal Election Commission ("FEC") has interpreted the elements that preclude the existence of an independent expenditure broadly. Indeed, in response to complaints questioning the existence of "consultation, coordination, cooperation or control" between the 1980 Reagan-Bush Committee and various independent expenditure committees, the FEC made "factual inquiries" and pursued enforcement proceedings against the political committees involved for nearly two and one-half years before determining that no further action with respect to such allegations was required.

As members of the President's staff, you (and possibly members of your staffs) are potential "agents" of Reagan-Bush '84, the authorized campaign committee of the President. Accordingly, I must recommend that you avoid any substantive political communications with any officers, employees or key supporters of NCPAC, FCM and Americans for Reagan until after the 1984 general elections. To do otherwise is to invite an FEC

"factual review" of all communications between members of the President's staff and these committees. Additionally, if any other "independent expenditure" committees are established on behalf of the President, you should adhere to this same restriction on communications with such groups.

The above restrictions on individual speech are abhorrent to my personal views of First Amendment freedoms. In light of the FEC's interpretations of the Federal election laws relating to independent expenditures, however, and in the interest of avoiding the possibility of FEC review of potential allegations (however groundless) questioning communications between White House staff and members of independent expenditure committees which may work on behalf of the President, I must request that you adhere to these guidelines.

If you have any questions with respect to this matter, please do not hesitate to contact my office.

THE WHITE HOUSE

WASHINGTON

February 14, 1984

MEMORANDUM FOR THE HEADS OF ALL DEPARTMENTS AND AGENCIES

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: 18 U.S.C. § 603

Section 603 of title 18 makes it a felony for any officer or employee of the United States to give a political contribution to any other officer or employee of the United States who is the "employer or employing authority" of the contributor. \*/ Although the issue is not free from doubt, this provision may prohibit any Federal employee from contributing to the authorized campaign committee of the President (Reagan-Bush '84).

Although such interpretation \*\*/ would raise grave constitutional concerns, prudence requires that any ambiguity in the language of this statute be resolved against placing any Presidential appointee or other Federal employee in the position of inadvertently violating Federal law. Hence, in the absence of any judicial interpretation of this provision or any legislative clarification of it, all Federal employees should be advised that this statute may preclude them from contributing to Reagan-Bush '84, the authorized campaign committee of the President.

I regret that such advice may inhibit Federal employees from the full exercise of their First Amendment rights; nevertheless, in the interest of maintaining strict compliance with all Federal statutes, every Federal employee should be made aware of the language and potential restrictions of this statutory provision.

Your cooperation in disseminating this advice will be greatly appreciated.

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\*/ The terms "contribution" and "authorized committee" are used as they are defined in the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431(8) and 432(e)(1).

\*\*/ This interpretation would be personal to the employee only, and would not apply to his or her spouse or family, and would be applicable only to contributions to Reagan-Bush '84.

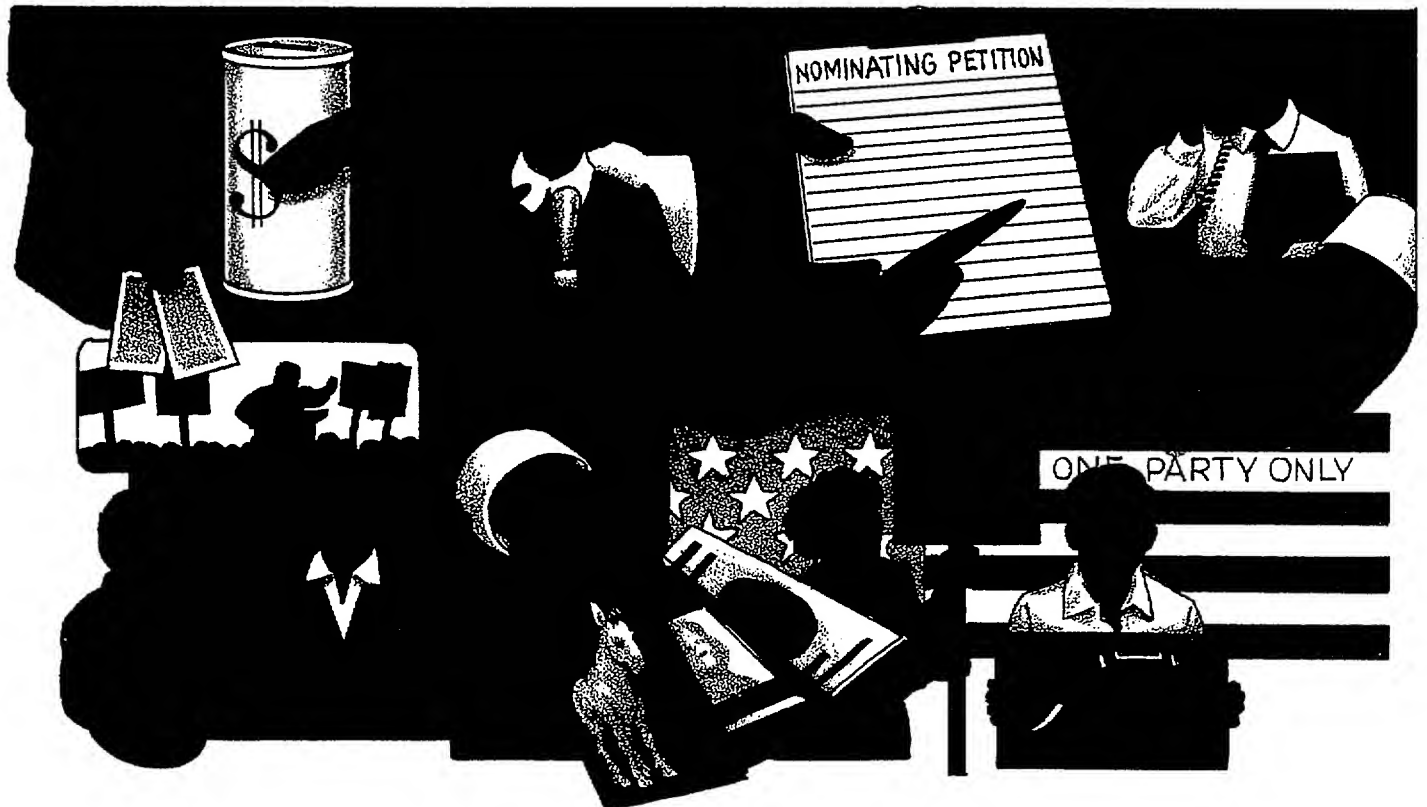
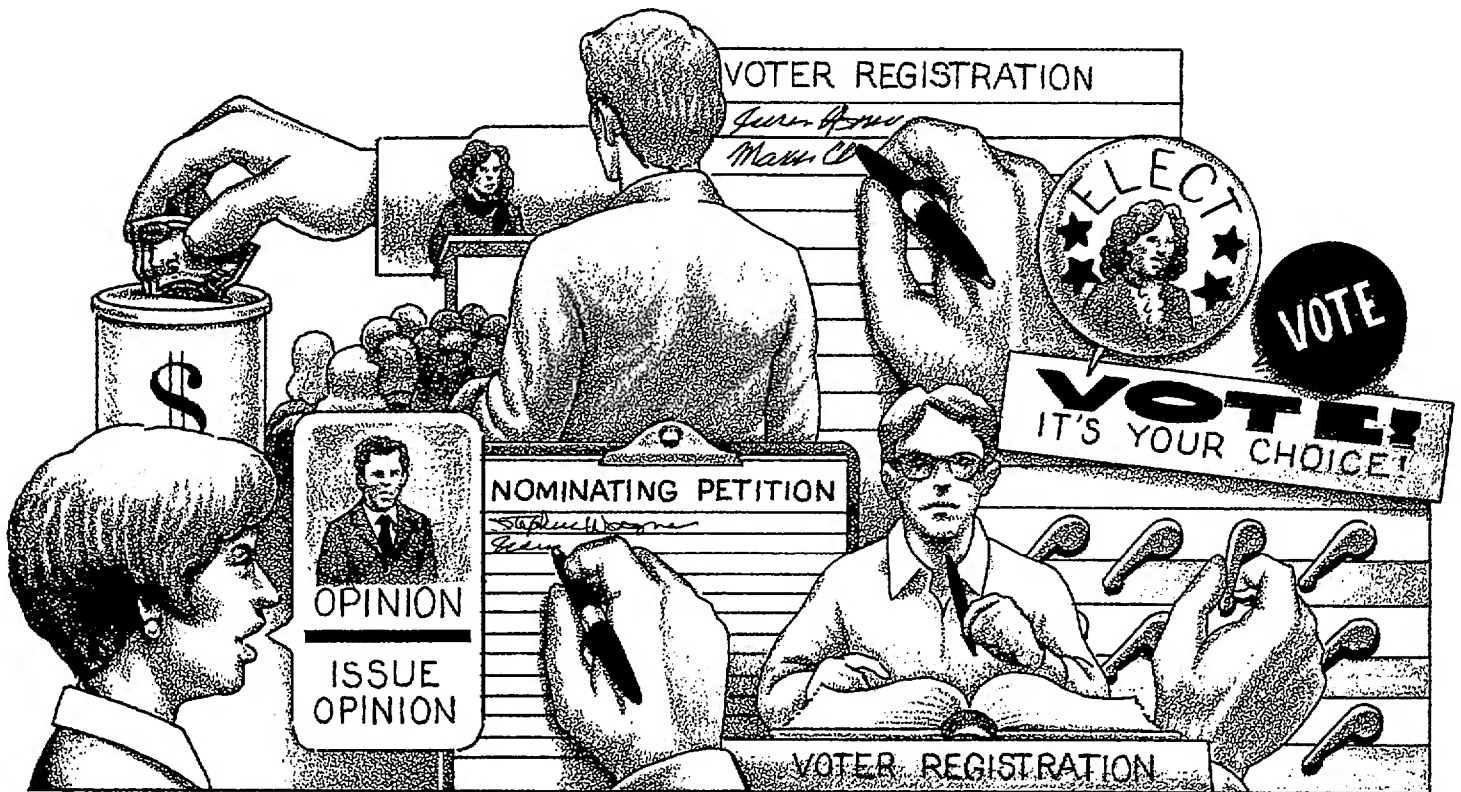
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cc: FFFielding/SMCooksey/Subject/Chron.

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# POLITICAL ACTIVITY

## AND THE FEDERAL EMPLOYEE



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# POLITICAL ACTIVITY

## AND THE FEDERAL EMPLOYEE

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### IMPORTANT NOTE

This booklet summarizes the laws, regulations and policies governing the political activities of federal employees and employees of the District of Columbia government. Its intent is to provide a basic overview of permissible and prohibited political activities. Employees should not rely on the opinions of friends or co-workers when they have questions with regard to a specific political activity. Ignorance of the law does not excuse an employee's violation of the Hatch Act. Reliance on incorrect or unofficial information also does not excuse a violation. Employees with additional questions may obtain an advisory opinion by telephoning the Office of the Special Counsel or by submitting those questions, in writing, to the address listed below.

Office of the Special Counsel  
U.S. Merit Systems Protection Board

1120 Vermont Avenue, N.W.  
Washington, D.C. 20419  
202/653-7188



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# The Hatch Act

## Its Importance to Federal Employees

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The political activity of government employees has been a concern of government officials since the earliest days of the Republic. Thomas Jefferson, the nation's third president, was among the first to raise this question.

In response to Jefferson's concern, the heads of the executive departments issued an order which stated that while it is "the right of any officer (federal employee) to give his vote at elections as a qualified citizen . . . it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution. . . ."

However, despite the concerns of Jefferson and other American statesmen, almost a century and a half elapsed before Congress enacted a comprehensive law regarding the political activities of government employees.

In 1939, Congress approved landmark legislation known as the Hatch Act which limits the political activities of federal employees, employees of the District of Columbia and certain employees of state and local governments. With the enactment of the Hatch Act, regulations governing the political activities of these employees were written into the United States Code for the first time.

In passing the Hatch Act, Congress determined that partisan political activity by federal employees, employees of the District of Columbia government and certain employees of state and local governments must be limited for public institutions to function fairly and effectively. Through the years, various challenges to the Hatch Act have only served to reaffirm this basic premise.

Before 1979, the U.S. Civil Service Commission had primary enforcement responsibilities for the Hatch Act. However, the Civil Service Reform Act of 1978 transferred the Commission's investigative and prosecutorial authority to the Office of the Special Counsel. The Office of the Special Counsel is an independent office within the U.S. Merit Systems Protection Board (MSPB). Among other things, the MSPB is the administrative body which adjudicates formal disciplinary actions filed by the Special Counsel against alleged violators of the Hatch Act.

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## Who Is Covered?

With very few exceptions, all employees in the executive branch of the federal government are subject to the political activity provisions of the Hatch Act. Employees of the U.S. Postal Service and the District of Columbia government are also subject to this law.

Part-time or temporary employees are also covered by the provisions of the Act. However, intermittent or occasional employees such as consultants, are covered only during the 24-hour period of any day in which they are actually employed.

It should be noted that all covered employees continue to be covered while on annual leave, sick leave, leave without pay, administrative leave or furlough.

## Who Is Not Covered?

The provisions of the Hatch Act do not apply to employees paid from the appropriation for the Office of the President, to heads and assistant heads of executive or military departments, and to officials who develop and implement national or foreign policy, and who are appointed to such positions by the President, subject to confirmation by the U.S. Senate.

The law also does not apply to individuals employed by educational or research institutions, establishments, or agencies which are supported in whole or part by the District of Columbia or by recognized religious, philanthropic or cultural organizations.

There is also a partial exemption for federal employees living in the vicinity of Washington, D.C., and in other communities where the majority of voters are employed by the federal government. (A detailed explanation of this exemption and those communities where it applies can be found in the Question and Answer section. See page 8.)

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# Political Do's & Don'ts For Federal Employees

The following list contains examples of both permissible and prohibited political activities for covered employees. These examples will be discussed in greater detail in the next section of the booklet.

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## Covered Employees

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- **May** register and vote as they choose
- **May** assist in voter registration drives
- **May** express opinions about candidates and issues
- **May** participate in campaigns where none of the candidates represent a political party
- **May** contribute money to political organizations or attend political fund raising functions
- **May** wear or display political badges, buttons, or stickers
- **May** attend political rallies and meetings
- **May** join political clubs or parties
- **May** sign nominating petitions
- **May** campaign for or against referendum questions, constitutional amendments, municipal ordinances
- **May not** be candidates for public office in partisan elections
- **May not** campaign for or against a candidate or slate of candidates in partisan elections
- **May not** make campaign speeches or engage in other campaign activities to elect partisan candidates
- **May not** collect contributions or sell tickets to political fund raising functions
- **May not** distribute campaign material in partisan elections
- **May not** organize or manage political rallies or meetings
- **May not** hold office in political clubs or parties
- **May not** circulate nominating petitions
- **May not** work to register voters for one party only

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An election is partisan if any candidate for an elected public office is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.

# Questions and Answers

## General Provisions

Q. What does federal law provide concerning political activity by federal and District of Columbia employees?

A. Generally, covered employees may not actively participate in partisan politics. Primary and runoff elections to nominate candidates of partisan political parties are partisan elections for purposes of the law even though no party designation appears on the ballot. Covered employees are also prohibited from taking an active part in partisan political management.

Specifically, an employee may not run as a candidate or actively work in a campaign if any of the candidates for the public office is to be nominated or elected as a candidate of a national or state political party such as the Republican or Democratic Party. Being a campaign worker in such an election or holding an official position in a national or state political party is prohibited.

However, while the Hatch Act prohibits political activity, it does not prohibit covered employees from holding public office. If individuals hold elective office at the time they obtain federal employment, they may continue to serve, but may not be candidates for re-election in partisan elections. Likewise, employees may accept appointments to fill vacancies in elected offices, or serve if elected in nonpartisan elections, unless the employing agencies

determine that this constitutes a conflict of interest with the performance of federal duties.

Q. Who is responsible for enforcing the Hatch Act?

A. The Special Counsel of the U.S. Merit Systems Protection Board, enforces the law for covered federal employees service and for employees of the District of Columbia government.

## Permitted Activities

Q. What political activity is permitted by the statute?

A. All qualified citizens have the right to register and vote and employees are encouraged to exercise this right of citizenship. The law also reserves to them the right to express their opinions on political questions and political candidates.

Q. Are employees allowed to take a direct part in any election campaigns?

A. They may take an active part in **nonpartisan elections**—even as candidates. As an example, a nonpartisan election is one where none of the candidates running for office are representatives of the Democratic or Republican parties. (If a federal employee wishes to serve in a state or local government position, the employee should check the regulations of his federal agency regarding outside employment.)

6 Q. To what extent are employees permitted to express opinions on political subjects and candidates?

A. Employees may express their views publicly or privately about a candidate or about political issues. However, they may not engage in active campaigning for partisan candidates. The display of a political badge, button or sticker is not prohibited political activity but may be restricted by agency regulations while employees are carrying out official duties.

With regard to political questions and public issues, employees are entitled to express their views as citizens. Employees are free to express their views and take action as individual citizens on such questions as referendum matters, changes in municipal ordinances and constitutional amendments. Issues involving highways, schools, housing and taxes are other examples of questions on which employees are usually free to take action. They can participate in meetings where these issues are discussed and they may join other citizens in presenting their views on such questions.

Q. Are employees entitled to make financial contributions?

A. Employees may make contributions to political organizations. However, employees are prohibited from either soliciting or collecting contributions for political organizations.

Q. May employees attend political rallies and join political clubs?

A. Employees may attend political rallies as spectators. They may not participate in the rallies by carrying banners or placards. They may join partisan political clubs but cannot take an active part in the management of the clubs, be officers or members of any of its committees.

Q. May employees attend a political conventions?

A. Yes. Covered employees may attend political conventions, but only as spectators. Employees are not allowed to take part in the deliberations or proceedings of the conventions or any of its committees. Covered employees may not be candidates for, or serve as delegates, alternates or proxies at such conventions.

Q. May an employee write a letter to the editor of a local newspaper expressing an opinion on a partisan issue?

A. Yes, but employees must not engage in concerted solicitations of votes for or against partisan candidates or political parties. (In support of a candidate or political party, the employee may neither write one letter and cause it to be distributed to five newspapers nor may the employee write five consecutive letters to one newspaper.)

Q. May a covered employee's spouse, if he or she is not covered by the law, engage in political activity?

A. Yes. The law does not restrict the activities of an employee's spouse or of other family members in any way.

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## Prohibited Activities

- Q. May employees work as part-time volunteers for partisan candidates if the activity does not involve contact with the public?
- A. No. The law prohibits direct action to assist partisan candidates or political parties in campaigns. Thus, covered employees are not permitted to do clerical work at campaign headquarters, write campaign speeches or canvass voters for the purpose of promoting support for candidates or political parties.

The prohibition applies to voluntary campaign work such as addressing and stuffing envelopes even when the activity is conducted in the employee's own home.

If however, employees have a part-time profession or business, they may be allowed to provide services to political parties or to the candidates under certain circumstances. If employees regularly provide such services and the services do not require the employees to perform duties which directly involve their creative talents in functions normally associated with campaigning, the services may be rendered to the parties or candidates.

- Q. What are some of the other activities that are prohibited?
- A. Soliciting or collecting political contributions, distributing campaign material, selling fund-raising dinner tickets or otherwise promoting such activities as political dinners are prohibited.

## Registration and Elections

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- Q. Are employees allowed to actively assist in voter registration drives?
- A. Yes. However, employees must not attempt to influence voters to register for a particular party.
- Q. May employees use cars to take voters to the polls on election day?
- A. Yes. Employees may assist voters to the polls as a gesture of goodwill or as part of an effort by a nonpolitical organization. Employees may not assist voters to the polls as part of an organized effort on behalf of candidates or political parties.
- Q. Employees are sometimes asked to serve as registrars on registration day or as election clerks or officers on election day. Are they permitted to do this?
- A. Yes. Employees may accept appointments to serve as election clerks, officers or in similar positions as prescribed by state or local law. However, they may not work at the polls on behalf of partisan candidates or political parties by acting as checkers, challengers, watchers or in similar partisan positions.
- Q. Are federal employees entitled to time off from work for voting or to register to vote?
- A. A federal government agency **may** authorize limited time off for voting, chargeable to administrative leave. An employee should check with his agency personnel office for specific information.

## Additional Considerations

- Q. Are any employees in an executive federal agency exempt from the restrictions of the federal law?
- A. Yes, the heads and assistant heads of departments, members of the White House staff and officials who determine national or foreign policy and who are appointed by the President, subject to Senate confirmation, are exempt from the prohibition against engaging in political management and political campaigns.
- Q. Does the law apply to part-time employees or to temporary employees?
- A. Yes, it applies to both. Intermittent or occasional employees, however, are covered only during the 24-hour period of any day on which they are actually employed.

## Partially-Exempted Communities

- Q. Are there any instances when a federal employee may be a candidate or take an active part in a partisan election?
- A. Yes. A special rule applies to local elections in certain communities of Maryland and Virginia near Washington, D.C., and in a few designated municipalities in other parts of the country. In communities designated by the U.S. Office of Personnel Management, federal-employee residents

may participate actively in local partisan campaigns and elections but only as independent candidates, on behalf of or against independents in the communities in which they reside. The communities to which the partial exemption apply are listed for your information.

**Maryland:** Annapolis, Anne Arundel County, Berwyn Heights, Bethesda, Bladensburg, Bowie, Brentwood, Capitol Heights, Cheverly, Chevy Chase, Martin's Additions, Sections 1-4 to Chevy Chase, Chevy Chase View, College Park, Cottage City, District Heights, Edmonston, Fairmont Heights, Forest Heights, Garrett Park, Glenarden, Glen Echo, Greenbelt, Howard County, Hyattsville, Kensington, Landover Hills, Montgomery County, Morningside, Mount Rainier, New Carrollton, North Beach, North Brentwood, North Chevy Chase, Northwest Park, Prince Georges County, Riverdale, Rockville, Seat Pleasant, Somerset, Takoma Park, University Park, Washington Grove.

**Virginia:** Alexandria, Arlington County, Clifton, Fairfax County, Town of Fairfax, Falls Church, Herndon, Loudon County, Manassas, Manassas Park, Portsmouth, Stafford County, Prince William County, Vienna.

**Others:** Anchorage, Alaska; Benecia, Calif.; Bremerton, Wash.; Centerville, Ga.; Crane, Ind.; District of Columbia; Elmer City, Wash.; Huachuca City, Ariz.; New Johnsonville, Tenn.; Norris, Tenn.; Port Orchard, Wash.; Sierra Vista, Ariz.; Warner Robins, Ga.

- Q. What is the basis for granting partial exceptions from Hatch Act restrictions to the residents of certain communities?
- A. Upon request, the partial exemption is granted by the Office of Personnel Management, under certain conditions, to communities in which large numbers of voters are employed by the federal government. The exemption recognizes that in such communities the domestic interest of the federal employees may justify their direct participation in local government.
- Q. How does this special right differ from the general restriction that applies to all federal employees?
- A. Under the general restriction, federal employees cannot be candidates for a local public office or campaign in elections for local public office in which other candidates for the same office represent partisan political parties (Republican or Democrat). In an excepted community the employee may run as an independent candidate against partisan political candidates (Republican or Democrats) and may actively work for or against an independent candidate in such an election.
- Q. To what extent may federal employees who reside in excepted communities campaign for independent candidates for local office?
- A. Employees may take an active part in the conducting of rallies and the operation of an independent candidate's campaign. In other words, they may engage in all campaign activities on behalf of independent candidates, except for soliciting and receiving political contributions from other federal employees.

- Q. Why is soliciting and receiving political contributions from other federal employees an exception to the permitted activities in the designated communities?
- A. The criminal laws of the United States prohibit exchange of political contributions between federal employees. The soliciting, giving or receiving of political contributions between federal employees or officers may make them subject to fine and imprisonment.

## Penalties for Violation

- Q. What is the penalty for violating the Hatch Act?
- A. For covered federal employees and District of Columbia government employees, the most severe penalty for violation is removal. The minimum penalty is suspension without pay for 30 days.
- Q. Where is the law found that restricts political activity of federal and District of Columbia government employees?
- A. Sections 7321-7327 of Title 5, United States Code; Part 733 of title 5, Code of Federal Regulations.

## District of Columbia School Teachers

- Q. How does the law affect District of Columbia school teachers?
- A. Teachers and other employees of the District of Columbia school system are not covered by the law.



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# The Office of the Special Counsel

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The Office of the Special Counsel is responsible for investigating reports or complaints concerning Hatch Act violations committed by covered federal employees and by employees of the District of Columbia government.

If an investigation indicates a violation of the law, a written complaint for disciplinary action may be filed with the U.S. Merit Systems Protection Board (MSPB). A copy of the complaint is also served on the offending employee. Full opportunity is provided to contest the charges, including a right to a hearing before the MSPB. The employee may be represented by counsel at all stages of the proceedings.

After consideration of the entire record, the MSPB will notify the employee and the employing agency of its decision. If the MSPB finds that the employee has violated the law, the maximum penalty that can be imposed is removal from government service. The minimum penalty that can be assessed is suspension without pay for 30 days.

In an effort to better acquaint federal employees with the provisions regarding

political activity, attorneys from the Office of the Special Counsel are available to brief federal executives and personnel officers on political participation by covered employees. Any interested party may request advisory opinions from the Office of the Special Counsel.

Past experience has shown that briefing programs are most effective with groups of 30 to 60 people. Arrangements for personal briefing sessions of this nature may be made by contacting the Office of the Special Counsel, U.S. Merit Systems Protection Board, Washington, D.C.

# Title 5. United States Code

## Chapter 73—Suitability, Security, and Conduct Subchapter III—Political Activities

Sec.

- 7321. Political contributions and services.
- 7322. Political use of authority or influence; prohibition.
- 7323. Political contributions; prohibition.
- 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
- 7325. Penalties.
- 7326. Nonpartisan political activity permitted.
- 7327. Political activity permitted; employees residing in certain municipalities.
- 7328. General Accounting Office employees.

### § 7321. Political contributions and services

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

### § 7322. Political use of authority or influence; prohibition

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

### § 7323. Political contributions; prohibition

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

### § 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) An employee in an Executive agency or an individual employed by the Government of the District of Columbia may not—

- (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or
- (2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

(d) Subsection (a)(2) of this section does not apply to—

- (1) an employee paid from the appropriation for the office of the President;
- (2) the head or the assistant head of an Executive department or military department;
- (3) an employee appointed by the President, by and with the consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;
- (4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or
- (5) the Recorder of Deeds of the District of Columbia.

**§ 7325. Penalties**

An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

**§ 7326. Nonpartisan political activity permitted**  
Section 7324 (a)(2) of this title does not prohibit political activity in connection with—

(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

**§ 7327. Political activity permitted; employees residing in certain municipalities**

(a) Section 7324 (a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

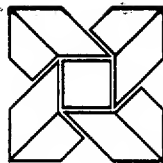
(b) The Office of Personnel Management may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

**§ 7328. General Accounting Office employees**

The preceding provisions of this subchapter shall not apply to employees of the General Accounting Office.



OFFICE OF THE SPECIAL COUNSEL  
U.S. Merit Systems Protection Board

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Washington, D.C. 20419  
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## State and Local Employees In Federally Aided Programs:

# Know the Rules On Political Activity

Under the law, you may not:

- (1) use your official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- (2) directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
- (3) be a candidate for public elective office in a partisan primary, general, or special election.

Other types of partisan political campaigning and management, which were previously prohibited, are now permitted.

**Caution:** Activity permitted by Federal law may be restricted or prohibited by State or local law or regulation.

For additional information contact: **The Office of the Special Counsel**  
Washington, D.C. 20419

# POLITICAL ACTIVITY

## AND THE STATE AND LOCAL EMPLOYEE



# POLITICAL ACTIVITY

## AND THE STATE AND LOCAL EMPLOYEE

### The Hatch Act

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### IMPORTANT NOTE

This booklet summarizes the laws, regulations and policies governing the political activities of certain employees of state and local governments. Its intent is to provide a basic overview of permissible and prohibited political activities. Employees should not rely on the opinions of friends or co-workers when they have questions with regard to a specific political activity. Ignorance of the law does not excuse an employee's violation of the Hatch Act. Reliance on incorrect or unofficial information also does not excuse a violation. Employees with additional questions may obtain an advisory opinion by telephoning the Office of the Special Counsel or by submitting their questions, in writing, to the address listed below.

Office of the Special Counsel  
U.S. Merit Systems Protection Board

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# The Hatch Act

## Its Importance to State and Local Government Employees

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The political activity of government employees has been a concern of elected officials since the earliest days of the Republic. Thomas Jefferson, the nation's third President, was among the first to raise this question.

In response to Jefferson's concern, the heads of the executive departments issued an order which stated that while it is "the right of any officer (federal employee) to give his vote at elections as a qualified citizen . . . it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution. . . ."

However, despite the concerns of Jefferson and other American statesmen, almost a century and a half elapsed before Congress enacted a comprehensive law regarding the political activities of government employees.

In 1939, Congress approved landmark legislation known as the Hatch Act which limits the political activities of federal employees, employees of the District of Columbia government and certain employees of state and local governments. With the enactment of the Hatch Act, regulations governing the political activities of these employees were written into the United States Code for the first time.

In passing the Hatch Act, Congress determined that partisan political activity by federal employees, employees of the District of Columbia government and certain employees of state and local governments must be limited for public institutions to function fairly and effectively. Through the years, various challenges to the Hatch Act have only reaffirmed this basic premise.

Before 1979, the U.S. Civil Service Commission had primary responsibility for enforcing the Hatch Act. However, the Civil Service Reform Act of 1978 transferred the Commission's investigative and prosecutorial authority to the Office of the Special Counsel. The Office of the Special Counsel is an independent office within the U.S. Merit Systems Protection Board (MSPB). Among other things, the MSPB is the administrative body which adjudicates formal disciplinary actions filed by the Special Counsel against alleged violators of the Hatch Act.



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## Who Is Covered?

The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants.

The following list offers examples of the types of programs which frequently receive financial assistance from the federal government: public health, public welfare, housing, urban renewal and area redevelopment, employment security, labor and industry training, public works, conservation, agricultural, civil defense, transportation, anti-poverty, and law enforcement programs.

Usually, employment with a state or local agency constitutes the principal employment of the employee in question. When an employee holds two or more jobs, principal employment is generally deemed to be that job which accounts for the most work time and the most earned income.

Hatch Act provisions also apply to employees of private, nonprofit organizations which plan, develop and coordinate federal Head Start, Community Services Block Grant or Economic Opportunity programs.

It should also be noted that employees of certain private, nonprofit single purpose organizations which receive federal assistance may not solicit contributions or use official authority to influence or interfere with the outcome of elections or nominations. Among these are organizations which receive federal assistance under the Head Start or Community Services Block Grant programs.

As a final note, state and local employees subject to political activity laws continue to be covered while on annual leave, sick leave, leave without pay, administrative leave or furlough.

## Who Is Not Covered?

Hatch Act provisions do not apply to:

- 1) individuals who exercise no functions in connection with federally financed activities; or
- 2) individuals employed by educational or research institutions, establishments, or agencies which are supported in whole or in part by state or political subdivisions thereof, or by recognized religious, philanthropic or cultural organizations.

The law also exempts certain specified employees from the prohibition on candidacy for elective office. These exemptions include:

- 1) the governor or lieutenant governor of a state, or an individual authorized by law to act as governor;
- 2) the mayor of a city;
- 3) a duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil service system; and
- 4) an individual holding public elective office. The latter exemption applies only when the elective office is the position which would otherwise subject the employee to the restrictions of the Hatch Act.

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# Political Do's & Don'ts For State and Local Employees

An individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants. . .

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- **May** be a candidate for public office in a nonpartisan election
- **May** campaign for and hold elective office in political clubs and organizations
- **May** actively campaign for candidates for public office in partisan and nonpartisan elections
- **May** contribute money to political organizations or attend political fundraising functions
- **May** participate in any activity not specifically prohibited by law or regulation
- **May not** be a candidate for public office in a partisan election
- **May not** use official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for office
- **May not** directly or indirectly coerce contributions from subordinates in support of a political party or candidate

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An election is partisan if any candidate for an elective public office is running as a representative of a political party whose presidential candidate received electoral votes at the preceding presidential election.

**CAUTION:** An employee's conduct is also subject to the laws of the state and the regulations of the employing agency. Prohibitions of the Hatch Act are not affected by state or local laws.

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# Questions and Answers

## General Provisions

- Q. Which state and local employees are restricted in their political activity?
- A. Executive branch employees in any agency of a state or local government whose principal employment is in connection with an activity financed in whole or in part by federal loans or grants are covered by the law.
- Q. What does "principal employment" mean?
- A. If an employee has only one position or job, that is his principal employment. When an employee holds two or more jobs, principal employment is usually deemed to be the job which accounts for more work time and earned income than any other job.
- Q. Which officers or employees of a state, territorial or municipal government are not prohibited from participating in political management or political campaigns?
- A. The governor, the lieutenant governor, the mayor of a city or other elected officials of a state or local government are exempt if the elective office is their principal employment.
- Q. Are there any other employees excepted by the statute?
- A. Yes. Officers and employees of educational and research institutions, establishments, agencies or systems supported in whole or in part by state or local governments or by recognized religious, philanthropic or cultural organizations are totally exempted from the statute.

## Prohibited Activities

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- Q. What does federal law provide concerning the political activity of certain state or local employees?
- A. State or local employees subject to the provisions of the Hatch Act may not:
- (1) use official authority or influence for the purpose of interfering with or affecting the result of elections or nominations for office;
  - (2) directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or
  - (3) be candidates for elective office.
- Q. Does the law cover employees in the executive branch of the territorial governments of Puerto Rico, the Virgin Islands, Guam and American Samoa?
- A. Yes. For purposes of the law the term "state" includes states, territories and possessions of the United States.
- Q. What type of activity is prohibited by the restrictions against misuse of official authority and coercion?
- A. These prohibitions are aimed at activities such as threatening to deny promotion to any employee who does not vote for certain candidates; requiring employees to

contribute a percentage of their pay to a political fund (e.g., a "2% Club"); influencing subordinate employees to buy tickets to political fund raising dinners and similar events; and advising employees to take part in political activity. These prohibitions principally affect supervisors but are applicable to any covered employee. For instance, employees still may not coerce, command or advise other covered employees to make political contributions or to contribute their time or anything of value for political purposes.

Q. What is meant by the prohibition against candidacy "for elective office"?

A. State or local employees subject to the Hatch Act may not be candidates for public office in partisan elections. Primary and run-off elections to nominate candidates of partisan political parties are partisan elections for purposes of the law even though no party designation appears on the ballot. However, candidacy for political party office is not prohibited by this provision.

Q. Does this mean that covered state or local employees cannot be candidates for public office in any election?

A. No. The law permits officers and employees to be candidates in *nonpartisan elections*. These are elections in which none of the candidates are nominated or elected as representatives of political parties whose presidential candidates received electoral votes at the last preceding presidential election.

Q. Who enforces the law for covered state and local employees?

A. The Special Counsel of the U.S. Merit Systems Protection Board (MSPB) is responsible for investigating and prosecuting Hatch Act matters. The MSPB has authority to adjudicate disciplinary actions brought by the Special Counsel against covered state and local employees who are alleged to have violated the law.

## Permitted Activities

Q. What types of political activity are permitted under the Hatch Act?

A. State or local employees subject to the provisions of the Hatch Act may take an active part in political management and political campaigns.

Q. What types of permitted activities are included in the term "political management"?

A. Employees may be members of and may hold office in political parties, organizations or clubs. Employees may attend meetings, vote on candidates and issues, and take an active part in the management of clubs, organizations or parties. Also, employees may be candidates for party office.

Attendance at political conventions and participation in the deliberations or proceedings are permitted activities. Employees may be candidates for, or serve as delegates, alternates or proxies at such conventions.

Volunteer work for partisan candidates, campaign committees, political parties or nominating conventions of political parties is permitted.

Q. What types of permitted activities does the term "political campaigns" include?

A. Employees may campaign for candidates in partisan elections by making speeches, writing letters and speeches for candidates or soliciting voters to support or oppose candidates.

Employees may attend political meetings or rallies including committee meetings of political organizations, and may serve on committees that organize or direct activities at partisan campaign meetings or rallies.

Q. May employees make financial contributions to political parties or organizations?

A. Yes. Employees may make financial contributions to political parties or organizations. The employees may solicit and collect voluntary political contributions. They may not, of course, coerce, command or advise other covered employees to make such contributions.

Q. Does the law prohibit employees from holding public elective office?

A. No. The law that prohibits candidacy for elective office does not prohibit holding office. Therefore, if an employee holds elective office when appointed to a covered state or local position, the employee may continue to serve but may not be a candidate for reelection in a partisan election. Likewise, an employee may accept appointment to fill a vacancy in an elective public office while concurrently serving in a covered position. Such an employee should, of course, ascertain from his or her employing agency if acceptance of such an appointment constitutes a conflict of interest.

Q. May employees work at the polls on election day?

A. Covered state or local employees may serve at the polls as election officials, clerks, checkers, watchers or as challengers for political party candidates in partisan elections.

## Penalties for Violation

Q. What is the penalty for violating the Hatch Act?

A. If the Merit Systems Protection Board finds that the offense warrants dismissal from employment, the employing agency must either: (1) dismiss the employee or (2) forfeit a portion of the federal assistance equal to two years salary of the employee.

If the Board finds the violation does not warrant the employee's discharge, no penalty is imposed.

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- 8 Q. Where is the law found which restricts political activity of state, territory, possession and local agency employees?
- A. Sections 1501-1508 of title 5, United States Code; Part 151 of title 5, Code of Federal Regulations.

### Special Considerations for Employees of Private, Nonprofit Agencies Receiving Federal Assistance

- Q. Are any political restrictions applicable to employees of private, nonprofit organizations?
- A. Yes. Employees of private, nonprofit organizations which plan, develop and coordinate federal Head Start, Community Services Block Grant or Economic Opportunity programs are subject to the same political activity restrictions that apply to covered state and local employees.

Employees of private, nonprofit single purpose organizations which receive assistance under the federal Head Start, Community Services Block Grant or Economic Opportunity programs may not coerce contributions or use official authority to influence or interfere with the outcome of elections and nominations.

- Q. Do the political activity restrictions apply equally for a full-time or part-time employee?
- A. Yes, provided the employees' position with the federally financed agency is their principal employment.
- Q. Is everyone employed under the Comprehensive Employment and Training Act (CETA) covered by the Hatch Act?
- A. No. Participants may or may not be covered depending on the particular activity in which they are employed. Those individuals, including participants, involved in the administration of CETA programs are covered.

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# The Office of the Special Counsel

The Office of the Special Counsel is responsible for investigating reports or complaints of Hatch Act violations by covered employees of state and local governments.

If an investigation indicates a violation of the law, a written complaint for disciplinary action may be filed with the U.S. Merit Systems Protection Board (MSPB). A copy of the complaint is served on the offending employee. Full opportunity is provided to contest the charges, including a right to a hearing before the MSPB. The employee may be represented by counsel at all stages of the proceedings.

After consideration of the entire record, the MSPB will notify the employee and the employing agency of its decision.

If the MSPB finds the offense warrants dismissal from employment, the employing agency must either: (1) dismiss the employee or (2) forfeit a portion of the federal assistance equal to two years' salary of the employee. If the MSPB finds the violation does not warrant the employee's discharge, no penalty at all is imposed.

In order to better acquaint those state and local government employees with the provisions regarding political activity, attorneys from the Office of the Special Counsel are available to brief officials of state and local agencies on political participation by covered employees. Any interested party may request advisory opinions from the Office of the Special Counsel.

Past experience has shown that briefing programs are most effective with groups of 30 to 60 people. Arrangements for personal briefing sessions may be made by contacting the Office of the Special Counsel, U.S. Merit Systems Protection Board, Washington, D.C.

# Title 5. United States Code

## 10 Chapter 15—Political Activity of Certain State and Local Employees

Sec.

- 1501. Definitions.
- 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
- 1503. Nonpartisan candidacies permitted.
- 1504. Investigations; notice of hearing.
- 1505. Hearings; adjudications; notice of determinations.
- 1506. Orders; withholding loans or grants; limitations.
- 1507. Subpenas and depositions.
- 1508. Judicial review.

### § 1501. Definitions

For the purpose of this chapter—

- (1) "State" means a State or territory or possession of the United States;
- (2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;
- (3) "Federal agency" means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and
- (4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—
  - (A) an individual who exercises no functions in connection with that activity; or
  - (B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

### § 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

- (a) A State or local officer or employee may not—
  - (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
  - (2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
  - (3) be a candidate for elective office.
- (b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.
- (c) Subsection (a)(3) of this section does not apply to—
  - (1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;
  - (2) the mayor of a city;
  - (3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system; or
  - (4) an individual holding elective office.

### § 1503. Nonpartisan candidacies permitted

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

### § 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges



based on such findings to the Merit Systems Protection Board, which shall—

- (1) fix a time and place for a hearing; and
- (2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

**§ 1505 Hearings; adjudications; notice of determinations**

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall—

- (1) determine whether a violation of section 1502 of this title has occurred;
- (2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and
- (3) notify the officer or employee and the agency of the determination by registered or certified mail.

**§ 1506 Orders; withholding loans or grants; limitations**

- (a) When the Merit Systems Protection Board finds—
  - (1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he violated section 1502 of this title and that the violation warrants removal; or
  - (2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

**§ 1507. Subpenas and depositions**

(a) The Merit Systems Protection Board may require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpoenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpoena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any

failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

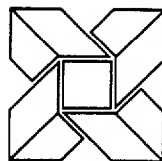
(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpoena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpoena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

#### **§ 1508. Judicial review**

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

- (1) the court specifically orders a stay; and
- (2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.



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